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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/725,574

12/03/2003

Gudmundur Fertram Sigurjonsson

SIGU3011/JJC

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625 SLATERS LANE

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ALEXANDRIA, VA 22314-1176

EXAMINER

HAND, MELANIE JO

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

12/02/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|---|--------------------------------------|--|--|
| Advisory Action Before the Filing of an Appeal Brief | Application No. 10/725,574 | Applicant(s) SIGURJONSSON ET AL. | |
| | Examiner MELANIE J. HAND | Art Unit 3761 | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☒ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 12, 14-16, 18-20, 23.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). 9/24/08
 13. ☐ Other: _____.

/Tatyana Zalukaeva/
 Supervisory Patent Examiner, Art Unit 3761

/Melanie J Hand/
 Examiner, Art Unit 3761

Continuation of 3. NOTE: Applicant amended independent claim 12 to recite that the second facing layer is coplanar with the proximal surface of the first facing layer, rather than generally coplanar, which narrows the scope of the claim, causing further search and consideration after a final action was mailed. This limitation, as well as the amendment to the specification, introduces new matter. Examiner's position is based upon applicant's original disclosure that the first skin-facing layer defines a portion of the body-facing surface of the wound dressing and that the second facing layer is directly bonded to and coextensive with said proximal surface. It is not possible for a layer of any thickness that is bonded to such surface to also be coplanar with said surface. Thus, the amendments to the claims and specification introduce new matter and will not be entered.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments with respect to the specification have been fully considered amended claim 12 have been fully considered but are not persuasive. Examiner disagrees with applicant's argument that amending claim 12 to recite that the second facing layer is coplanar with the first facing layer does not introduce new matter. Such a limitation narrows the scope of the claim and is not supported by the disclosure as originally filed. With respect to arguments regarding claim 23 the same embodiment of the dressing of Lawry can be used against both claim 12 and 23 because claim 23 comprises a first skin facing layer, i.e. any prior art having additional layers will still be valid prior art against the claims. Examiner did not assert that a combination of layers 16 and 26 met the limitation of the claimed single facing layer, only layer 16. Applicant's argument that Lawry does not teach a silicone facing layer with apertures, first, the references cited by applicant in the Remarks are two isolated references whose teachings are not relevant to the teachings of Lawry. Second, there is no limitation in claim 23 as to impregnation or how the gel layer is formed and even if there were, it would be a product-by process limitation, still rejected over Lawry alone. Lawry clearly discloses apertures in a gel layer, i.e. the entire layer is gel, and the apertures are formed in the gel layer. Thus the non-apertured portions necessarily consist of the gel compound that forms the entire layer.